(2)

No. 99-1758

JUN 05 2000

IN THE

# Supreme Court of the United States

DELAWARE RIVER PORT AUTHORITY,
*Petitioner,*

v.

FRATERNAL ORDER OF POLICE,
PENN-JERSEY LODGE 30, AND JOSEPH VENA,
*Respondents.*

**On Petition for a Writ of Certiorari to the Superior Court of New Jersey, Appellate Division**

## BRIEF OF FRATERNAL ORDER OF POLICE, PENN-JERSEY LODGE 30 and JOSEPH VENA IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI

BRUCE E. ENDY*
CHARLES T. JOYCE
BENJAMIN EISNER
SPEAR, WILDERMAN, BORISH, ENDY, SPEAR AND RUNCKEL, P.C.
230 South Broad Street, Suite 1400
Philadelphia, PA 19102
(215) 732-0101

*Counsel for Fraternal Order of Police Penn-Jersey Lodge 30 and Joseph Vena*

* *Counsel of Record*

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20001

## COUNTERSTATEMENT OF THE QUESTIONS PRESENTED

Should this Court grant Certiorari to determine whether complementary and substantially similar public sector labor legislation enacted by states which are parties to an interstate compact may be applied to a bi-state agency formed by the compact, when the compact itself provides that additional duties may be imposed upon the agency if both states pass laws having a "substantially similar effect"? Specifically, should the Court address this question in a case in which the Appellate Division of the New Jersey Superior Court applied a settled principle of construction of bi-state compacts shared by the agency's creator states, that conflicts with neither the decisions of this nor other federal or state Courts, and on which the New Jersey Supreme Court recently relied in a decision this Court declined to review or disturb?

Moreover, should this Court review a unanimous and self-described "arguably interlocutory" decision of a state intermediate appellate court, holding only that the parallel labor policies of New Jersey and Pennsylvania that provide police officers with the right to negotiate collectively and which employ mandatory interest arbitration, rather than strikes, to settle unresolved issues, should be applied to a bi-state agency of New Jersey and Pennsylvania?

TABLE OF CONTENTS


| | Page |
|---|---|
| COUNTERSTATEMENT OF THE QUESTIONS PRESENTED | i |
| TABLE OF CONTENTS | iii |
| TABLE OF AUTHORITIES | iv |
| COUNTERSTATEMENT OF THE CASE | 1 |
| A. The Delaware River Port Authority and the Fraternal Order of Police Penn-Jersey Lodge 30 | 1 |
| B. The Proceedings Below | 2 |
| REASONS FOR DENYING THE WRIT | 4 |
| I. THE APPELLATE DIVISION PROPERTY APPLIED LONG-SETTLED AND CONSISTENT PRINCIPLES OF NEW JERSEY AND PENNSYLVANIA LAW IN INTERPRETING THE DRPA COMPACT, AND THERE IS NO REASON FOR THIS COURT TO DISTURB THIS RULING | 4 |
| II. THE DECISION BELOW DOES NOT CONFLICT WITH DECISIONS OF OTHER STATE OR LOWER FEDERAL COURTS | 8 |
| III. THE DECISION BELOW DOES NOT CONFLICT WITH THE DRPA COMPACT AND HENCE DOES NOT VIOLATE THE SUPREMACY CLAUSE | 13 |
| IV. THE DECISION BELOW IS "ARGUABLY INTERLOCUTORY" AND THUS NOT FIT FOR THIS COURT'S REVIEW | 14 |
| CONCLUSION | 15 |

## TABLE OF AUTHORITIES


| *Cases*: | Page |
|---|---|
| *Ampro Fisheries, Inc. v. Yāskin*, 127 N.J. 601, *cert. denied*, 506 U.S. 952 (1994) | 5 |
| *Bunk v. Port Authority of New York and New Jersey*, 144 N.J. 176 (1996) | 5, 6 |
| *Delaware River and Bay Authority v. Carello*, 43 Del.Ch. 213, 222 A.2d 794 (1966) | 9 |
| *Delaware River and Bay Authority v. International Org. of Masters, Mates and Pilots*, 45 N.J. 138 (1965) | 5, 6 |
| *Delaware River Joint Toll Bridge Comm'n. v. Colburn*, 310 U.S. 419 (1940) | 5 |
| *Delaware River Port Authority v. Ethics Comm'n.*, 585 A.2d 537 (Pa. Cmwlth, 1991) | 8 |
| *Eastern Paralyzed Veterans Ass'n v. Camden (EPVA)*, 111 N.J. 389 (1988) | 5, 6 |
| *Hamilton-Brown Shoe Company v. Wolf Brothers and Co.*, 240 U.S. 251 (1916) | 14 |
| *Hess v. Port Authority Trans-Hudson Corp.*, 513 U.S. 30 (1994) | 5 |
| *International Union of Operating Engineers, Local 68 v. Delaware River and Bay Authority*, 147 N.J. 433, *cert. denied*, 522 U.S. 361 (1997) | 3, 5, 6, 7, 13 |
| *Klickitat County v. State*, 862 P.2d 629 (Wash. Ct. App. 1993) | 10 |
| *Malverty v. Waterfront Comm'n of New York Harbor*, 524 N.E.2d 421 (N.Y. 1988) | 11 |
| *Moore V. Delaware River Port Authority*, 80 F.Supp.2d 764 (D. N.J. 1999) | 9 |
| *Nardi v. Delaware River Port Authority*, 490 A.2d 949 (Pa. Cmwlth. 1985) | 7, 8 |
| *Oklahoma v. New Mexico*, 501 U.S. 239 (1991) | 13, 14 |
| *Petty v. Tennessee-Missouri Bridge Comm'n.*, 359 U.S. 275 (1959) | 4, 12 |
| *Pilla v. Delaware River Port Authority*, 1999 WL 45918 (E.D. Pa. May 7, 1999) | 9 |

TABLE OF AUTHORITIES—Continued


| | Page |
|---|---|
| *Redbird Engineering Sales Inc. v. Bi-State Development Agency of Missouri-Illinois Metropolitan District, et al.*, 806 S.W.2d 695 (Mo. App. Ct. 1991) | 10 |
| *Rice v. Sioux City Memorial Park Cemetery*, 349 U.S. 70 (1955) | 8 |
| *Salmon for All v. Department of Fisheries*, 821 P.2d 1211 *(Wash. 1992) (en banc)* | 10 |
| *Seattle Master Builders Ass'n v. Pacific Northwest Electrical Power and Conservation Planning Council*, 786 F.2d 1359 (9th Cir. 1986), *cert. denied*, 479 U.S. 1059 (1987) | 10 |
| *State ex rel Dyer v. Sims*, 341 U.S. 22 (1951) | 12 |
| *Texas v. New Mexico*, 482 U.S. 124 (1987) | 13 |
| *Textar Painting Corp. v. DRPA*, 246 N.J. Super. 251 (Law Div. 1996) | 5 |
| *Statutory Provisions*: | |
| Delaware River Port Authority Compact | |
| N.J.S.A. § 32:3-2 | 2 |
| N.J.S.A. § 32:3-3 | 2 |
| N.J.S.A. § 32:3-4a | 2 |
| N.J.S.A. § 32:4-6 | 1, 2, 13 |
| 36 P.S. §3504.1a | 1, 2, 13 |

## COUNTERSTATEMENT OF THE CASE

For the second time in less than three years, petitioner Delaware River Port Authority ("DRPA") urges this Court's review of a routine application of settled state law principles shared by the creator states to interpret a bi-state compact.[1] Petitioner here presents no reason for the Court to accord this application any different treatment than that provided to Petition No. 97-81. The Petition for a Writ of Certiorari should be denied.

### A. The Delaware River Port Authority and the Fraternal Order of Police Penn-Jersey Lodge 30

The powers of the DRPA are framed by its congressionally approved Compact. As petitioner concedes, the Compact expressly provides that these powers are subject to amendment "from time to time by the action of either state concurred in by legislation of the other." Pet. at 5;(A-73a).[2] The imposition of additional powers or responsibilities upon the DRPA occurs either when the states agree explicitly to amend the language of the Compact itself, or when one creator state passes legislation that becomes applicable to the DRPA when the other state enacts "legislation having a substantially similar effect." *See, e.g., N.J.S.A.* § 32:4-6, "Historical and Statutory Notes"; 36 P.S. § 3504.1a "Historical and Statutory Notes".[3]

---

[1] In No. 97-81, *The Delaware River and Bay Authority v. International Union of Operating Engineers Local 68, et al.*, the petitioner filed an *amicus* brief in support of a Petition for a Writ of Certiorari to the New Jersey Supreme Court filed by The Delaware River and Bay Authority, which advanced the same arguments as those contained in the current application. This petition was denied. 522 U.S. 861 (1997).

[2] Petitioner's Appendix is referred to as (A-) followed by the relevant page numbers(s).

[3] The Compact further and repeatedly provides that legislation passed in one compact state shall become effective and applicable to the DRPA

The DRPA employs seventy-eight police officers who, pursuant to the terms of the Compact, enjoy "all the powers...and all the immunities conferred by law on police officers or municipal police officers in...the State of New Jersey and the Commonwealth of Pennsylvania." (A-2a); *N.J.S.A.* § 32:4-6; 36 P.S. § 3504.1a. DRPA police officers patrol in both New Jersey and Pennsylvania, enforce the laws of each state to protect DRPA property and the over 50 million people who annually transverse the DRPA's interstate bridge facilities, and face the same dangers as their brethren patrol officers working for municipalities in New Jersey and Pennsylvania. (A-5a); Pet. at 4.

For over 20 years, the DRPA recognized respondent, Fraternal Order of Police Penn-Jersey Lodge 30 ("Lodge 30" or "the Union") as the exclusive bargaining representative of the DRPA patrol officers, and engaged in good faith collective negotiations with the Union to jointly craft the terms of the officers' employment. (A-2a). In 1996, however, despite protestations from Lodge 30, the DRPA ceased negotiations and unilaterally imposed working conditions upon the DRPA police. *Id.* The underlying lawsuit ensued, with Lodge 30 asking the court to require the DRPA to return to the bargaining table, to appoint a mediator, and to effect "such further relief" as the court might "deem[]necessary."*Id.*

**B. The Proceedings Below**

After the trial court denied petitioner's Motion for Summary Judgment, respondents moved for an order "requiring the parties to negotiate an impasse resolution procedure featuring interest arbitration under court supervision," arguing that New Jersey and Pennsylvania both

---

upon the "passage...of a substantially similar act," or "the enactment of similar legislation," or of "legislation substantially similar" by the other compact state. *N.J.S.A.* §§ 32:3-2; 32:3-3; 32:3-4a.

provided such a mechanism for settling contract disputes between their public police and public employers. (A-3a). The trial judge adopted the expert opinion of University of Pennsylvania Law School Professor Clyde W. Summers, who opined that interest arbitration in such a setting "was appropriate and desirable" and that the DRPA's creator states' legislative enactments in this regard "were 'substantially the same.'" *Id.* The trial court also conducted "an independent review of each statutory scheme" and made "an independent determination of the[ir] complementary and parallel nature." (A-4a., n.3). Although he concluded he possessed the equitable authority to do so, the trial judge did not order the parties to proceed to interest arbitration; he instead required them to attempt to voluntarily craft a system to resolve their contractual dispute. (A-5a). If this failed, the court stated, it would "order binding interest arbitration" to resolve the matter. *Id.*

Although final relief had not been ordered, the court certified its order as final for purposes of appellate review and petitioner appealed to the New Jersey Superior Court, Appellate Division. (A-21a). A three judge panel unanimously affirmed. (A-1a). Parenthetically noting that the appeal was arguably "interlocutory because the parties have not been ordered to submit their dispute to public interest arbitration" (A-7a, n.4), the Appellate Division found the trial judge's ruling consistent with the doctrine of "parallel and complementary state legislation," a well-established rule of law used to interpret interstate compacts that had been embraced by New Jersey and Pennsylvania courts since 1965, and recently and resoundingly reaffirmed by the New Jersey Supreme Court. *International Union of Operating Engineers, Local 68 v. Delaware River and Bay Authority,* 147 N.J. 433, *cert. denied,* 522 U.S. 361 (1997). ("Local 68"). (*See* A-9a - 12a).

Because the Appellate Division's decision was unanimous, the DRPA sought Certification of Judgment from the New Jersey Supreme Court. This Petition was denied. (A-22a). The DRPA thereupon filed the instant Petition for a Writ of Certiorari with this Court. Currently, the parties are back before the trial court to determine whether they will be ordered to proceed to interest arbitration at this time.

## REASONS FOR DENYING THE WRIT

### I. THE APPELLATE DIVISION PROPERLY APPLIED LONG-SETTLED AND CONSISTENT PRINCIPLES OF NEW JERSEY AND PENNSYLVANIA LAW IN INTERPRETING THE DRPA COMPACT, AND THERE IS NO REASON FOR THIS COURT TO DISTURB THIS RULING.

This Court's rules caution that a "petition for a Writ of Certiorari is rarely granted when the asserted error consists of...the misapplication of a properly stated rule of law." Sup.Ct.R. 10. At bottom, petitioner's assault upon the decision below consists entirely of the unsupportable claim that the Appellate Division "departed from 75 years of bi-state compact jurisprudence" when it found that the labor laws of New Jersey and Pennsylvania providing for interest arbitration to resolve contract disputes between public police and their employees constituted "complementary state legislation" which, under the terms of the DRPA Compact, was therefore applicable to the bi-state agency. Such a contention, besides being an utter misstatement of law, is facially insufficient to warrant the exercise of this Court's discretionary review, because the Appellate Division below correctly stated the applicable rule of compact interpretation.

Although the interpretation of a compact "presents a federal question," *Petty v. Tennessee-Missouri Bridge Comm'n.*, 359 U.S. 275, 278 (1959), "(t)he legal

consequences of the terms of a compact are not, as a generalized proposition, for the originating construction of this Court." *Id.*, at 284 (Frankfurter, J., dissenting). Rather, this Court "show[s] deference to state law in construing a compact." *Petty, supra*, 359 U.S. at 278, n.4. *See, e.g., Hess v. Port Authority Trans-Hudson Corp.*, 513 U.S. 30, 46 (1994) (noting that nothing in "the laws of either state" supports assumption that creator states are responsible under terms of compact for debts of bi-state agency); *Delaware River Joint Toll Bridge Comm'n. v. Colburn*, 310 U.S. 419, 432 (1940) (finding bi-state agency of New Jersey and Pennsylvania not liable for consequential damages under compact, as "the settled law" of each state prohibits recovery of such damages).

Contrary to the hyperbolic claim of petitioner, the court below applied a doctrine of compact construction -- the principle that substantially similar state legislation can be applied to a bi-state agency -- that has been an established staple of New Jersey and Pennsylvania jurisprudence for over three decades.

Beginning with *Delaware River and Bay Authority v. International Org. of Masters, Mates and Pilots*, 45 N.J. 138 (1965), continuing with *Eastern Paralyzed Veterans Ass'n v. Camden (EPVA)*, 111 N.J. 389 (1988), *Ampro Fisheries, Inc. v. Yaskin*, 127 N.J. 601, *cert. denied*, 506 U.S. 952 (1994), *Bunk v. Port Authority of New York and New Jersey*, 144 N.J. 176 (1996), *Textar Painting Corp. v. DRPA*, 246 N.J. Super. 251 (Law Div. 1996), and culminating with *Operating Engineers Local 68, supra*, New Jersey courts have consistently applied the doctrine of "parallelism" to various bi-state compact agencies, including petitioner. Under this principle, a single state may not unilaterally impose its will on a bi-state agency, but the creator states together may subject the agency to complementary or parallel state legislation. *Local 68*, 147 N.J. at 447; *Bunk*, 144 N.J. at 185;

*EPVA*, 111 N.J. 401. Such legislative enactments need not be "identical" to be given parallel effect; all that is necessary is that the laws be "substantially similar," *EPVA, supra,* or even "somewhat similar", if they espouse a "central" or "dominant theme" in the respective public policies of the states. *Bunk, supra.* Finally, there is no need for the laws to specifically provide that they apply to a bi-state agency; all that is required by courts is "some showing of agreement in the laws involving and regulating a bi-state agency." *Local 68*, 147 N.J. at 445; *Masters, Mates and Pilots, supra, Bunk, supra,* 144 N.J. at 189.

*Local 68, supra*, a decision relied upon by the court below, features a pattern of fact and law that nearly mirrors the instant case. There, as here, a labor organization representing employees of a bi-state agency (in that case, The Delaware River and Bay Authority ("DRBA"), formed pursuant to an interstate compact between New Jersey and Delaware) sought judicial recognition of its members' rights to organize and negotiate collectively, arguing that the labor law policies of the agency's creator states, as reflected in respective state labor statutes, provided public employees with such rights. There, as here, the agency's governing compact featured a provision empowering it to "fix and determine" the "compensation...and all other conditions and terms of employment" of its employees, along with a clause specifying that the agency may be subject to obligations other than those articulated in the compact if authorized under "the law of both states." 147 N.J. at 438, 446.[4]

Broadly canvassing the respective state laws, the New Jersey Supreme Court held that the statutes, "although not

---

[4] "Implicit in that provision," held the New Jersey Supreme Court, "is the premise that the two states may subject the DRBA to complementary or parallel legislation." *Operating Engineers Local 68 v. The Delaware River and Bay Authority*, 147 N.J. 433, 446, *cert. denied*, 522 U.S. 861 (1997).

identical, are complementary and parallel. As a matter of public policy, the legislatures of both states have concluded that public employees should have the right of collective negotiation and that employers should not interfere with that right." *Id.*, at 447. "In effect", the court concluded, "the legislatures have modified the Compact." *Id.* Explaining its reasoning further, the *Local 68* court stated:

> ...we merely recognize that the New Jersey and Delaware legislatures have adopted a *substantially similar policy* concerning collective negotiations by public employees. *Anomalous indeed would be the failure to apply so important a policy to an entity created by both states for their mutual benefit.*

*Id.*, (emphasis added).

The *Local 68* court thus confirmed that the labor codes of two creator states which are "not identical", but which nevertheless are "complementary and parallel", in that they express, "[a]s a matter of public policy", a shared legislative intent to provide certain classes of public employees with certain labor rights, should be applied to employees of a bi-state agency. 147 N.J. at 447.

Despite Petitioner's completely erroneous protestations to the contrary, Pennsylvania courts likewise have entirely adopted the principles of parallelism. In *Nardi v. Delaware River Port Authority*, 490 A.2d 949 (Pa. Cmwlth. 1985), the Pennsylvania Commonwealth Court held that its state's police disability statute did not cover DRPA police officers, but only because New Jersey's assertedly equivalent law was "*not* substantially similar." 490 A.2d at 952. Indeed, the court in *Nardi* emphasized that "*identical* legislation would [not] be required" to render the law applicable to the bi-state agency, *Id.* at n.10, and invited the New Jersey legislature to "amend *its statute* to reflect agreement with the clearly stated

intention of the Pennsylvania legislature." *Id.* at n.11 (emphasis added).[5]

Thus, well before the Appellate Division applied what petitioner terms "the implied amendment" rule in the case below, courts in the two compact states had fully and routinely embraced this doctrine. The decision below is therefore not, as petitioner intones, the product of a "new and radical technique" of judicial interpretation, but a rather mundane application of settled principles of compact construction shared by the creator states and undeserving of this Court's attention.

## II. THE DECISION BELOW DOES NOT CONFLICT WITH DECISIONS OF OTHER STATE OR LOWER FEDERAL COURTS

This Court deems it "very important that [it] be consistent in not granting the Writ of Certiorari except in cases...where there is a real and embarrassing conflict of opinion and authority" between lower courts. *Rice v. Sioux City Memorial Park Cemetery*, 349 U.S. 70, 79 (1955). Petitioner boldly asserts that New Jersey's application of parallelism to bi-state compact interpretation conflicts with the jurisprudence of Pennsylvania, Delaware, New York, and with applicable federal court decisions. Once again, petitioner's contention is grounded upon a profound misstatement of the case law.

As already demonstrated *supra*, Pennsylvania's interpretation of the DRPA compact is completely congruent with New Jersey's. *See Nardi, supra, Delaware River Port Authority v. Ethics Comm'n., supra*, 585 A.2d at 588.

---

[5] Following *Nardi*, the Pennsylvania courts have expressly declared that the DRPA "do[es] not exist in a vacuum and [is] not immune from regulation. Such regulation can take several forms. First, the member states can pass substantially similar legislation, as contemplated by the compact." *Delaware River Port Authority v. Ethics Comm'n.*, 585 A.2d 587, 588 (Pa. Cmwlth. 1991).

Petitioner's claim that Pennsylvania "requires precise evidence of *agreement* between the states on the application of specific statutory measures," to the Compact, Pet. at 17, (emphasis in original) is not supported by citation to any Pennsylvania authority. Petitioner simply cannot escape the signal fact that the DRPA's creator states equally endorse and embrace the applicability of "substantially similar" legislation to the DRPA.

Contrary to the DRPA's contention, Delaware courts are also entirely in accord with the concept of parallel legislation, as noted in *Local 68, supra*, 147 N.J. at 446, *citing Delaware River and Bay Authority v. Carello*, 43 Del.Ch. 213, 222 A.2d 794, 797 (1966)("The Delaware courts follow a similar practice" endorsing the imposition of additional duties upon a bi-state agency if both creator states feature legislation "of a similar nature"). Similarly, petitioner's assertion that "[e]very lower federal court that has considered" the doctrine of parallel legislation "has rejected it," relies upon an erroneous reading of a single, unpublished federal decision, *Pilla v. Delaware River Port Authority*, 1999 WL 45918 (Newcomer, J.) (E.D.Pa. May 7, 1999).[6] The DRPA fails, however, to mention *Moore v. Delaware River Port Authority*, 80 F.Supp 2d 264 (D.N.J. 1999), where the federal court held that the DRPA may be subject to legal duties beyond those specified in the Compact if "the applicable...law of New Jersey is 'substantially similar in nature' to that of Pennsylvania." 80 F.Supp. 2d at 269.

---

[6] In *Pilla*, the federal court actually acknowledged that the DRPA is subject to the imposition of additional duties if its creator states feature "complimentary or parallel state legislation." 1999 WL 345918 at *3. The court simply held that the specific differences in the respective state anti-discrimination statutes were so significant that the two laws were "not complementary and parallel, and therefore [could] not be constitutionally applied to the DRPA." *Id.* at *4.

Petitioner's contention that Washington state courts and the Ninth Circuit Court of Appeals reject the doctrine of parallel legislation likewise finds no support whatever in the cases cited. In *Salmon for All v. Department of Fisheries*, 821 P.2d 1211 (Wash. 1992) (en banc), for example, there was no attempt to apply bi-lateral state laws to an interstate agency; the plaintiff there argued that Washington law *unilaterally* bound the proceedings of a Washington-Oregon bi-state agency, without referencing Oregon law. The theory of complementary legislation was not even mentioned, much less advanced as a basis for the plaintiff's claim. *See also Klickitat County v. State*, 862 P.2d 629 (Wash. Ct. App. 1993) (issue only whether Washington law applied to Washington-Oregon interstate agency; no discussion of whether Oregon had similar law). Similarly, in *Seattle Master Builders Ass'n v. Pacific Northwest Electrical Power and Conservation Planning Council*, 786 F.2d 1359 (9th Cir. 1986), *cert. denied*, 479 U.S. 1059 (1987), the plaintiff unsuccessfully argued that the environmental laws of Montana and Washington should be applicable to a *multi*-state compact, composed of those two sovereigns *as well as* Oregon and Idaho. 786 F.2d at 1362, 1370-71. There was no contention that the latter two states likewise featured such legislation, and the doctrine of parallelism was never raised.[7]

The decision below plainly does not conflict, in any conceivable manner, with *any* of these cases. Indeed, for all petitioner's efforts to portray the principle of complementary legislation as a renegade legal doctrine, the only case that

---

[7] Significantly, the petitioner fails to cite a decision from another jurisdiction, *Redbird Engineering Sales, Inc. v. Bi-State Development Agency of Missouri-Illinois Metropolitan District, et al.*, 806 S.W. 2d 695 (Mo. App. Ct. 1991) which, quoting the New Jersey Supreme Court's *EPVA* decision, fully adopted and applied the doctrine of complementary state legislation to a Missouri-Illinois bi-state compact. 806 S.W. 2d at 701-702.

arguably displays displeasure with this theory is *Malverty v. Waterfront Comm'n. of New York Harbor*, 524 N.E.2d 421 (N.Y. 1988). That decision, however, contains distinguishing elements that make its "conflict" with the New Jersey courts far less than petitioner posits, and does not, in the context of our federal system, warrant this Court's exercise of its certiorari jurisdiction.

In *Malverty*, the New York court's ostensible rejection of the doctrine of complementary legislation appears in *dicta*: the appellant there contended that New York law applied *unilaterally* to the Waterfront Commission, a bi-state agency of New York and New Jersey. More importantly, *Malverty* was premised upon a unique practice of the New York legislature. As the court noted, that body, unlike New Jersey's and Pennsylvania's, "expressly stated that certain legislation" was meant specifically to govern the Waterfront Commission when it enacted law, and in the absence of such definitive legislative expression, no statute was deemed applicable to that compact. *Id.* at 422. *Malverty* is simply an acknowledgment of a discrete legislative determination regarding how obligations are to be imposed on entities established by compacts between New York and other states; it does not conflict with New Jersey and Pennsylvania's shared view that *their* bi-state compacts may be subject to parallel legislation, even if such laws do not necessarily state that they are applicable to such entities.

Grounded in the New York legislature's particular approach to amending a bi-state compact, *Malverty* hardly heralds a reason to grant this Writ; instead, the case demonstrates the wisdom of this Court staying its hand. Petitioner assumes a need for this Court to craft a uniform federal approach to interpreting the terms and conditions of each discrete interstate compact. Putting aside the now demonstrated fact that the vast weight of judicial authority supports the means of construction employed by the court

below, petitioner's argument ignores the essential fact that interstate compacts are created primarily to effectuate and foster local interests. As individual creations of the creator states, compacts are ill-suited to uniform principles of legal construction beyond those applied by the courts of the respective compact states. *State ex rel Dyer v. Sims,* 341 U.S. 22, 27 (1951) ("inherent limitations upon this Court's ability to deal with multifarious local problems" encountered in construing interstate compacts "have inhibited the formulation of a code for dealing with such controversies.") As Justice Frankfurter observed in *Petty, supra,*

> Since a Compact comes into being through an Act of Congress, its construction gives rise to a federal question....But a federal question does not require a federal answer by way of a blanket, nationwide substantive doctrine where essentially local interests are at stake....[T]he meaning parties attribute to the words governs the obligations assumed in the agreement....[T]he language they employed in the Compact, not modified by Congress, should be limited to the legal significance that these States have placed upon such language, not to avoid the obligations they undertook, but to enforce the meaning of conventional language used in their law.

359 U.S. at 285 (Frankfurter, J., dissenting) (citations omitted).

It is thus simply not material what construction the New York courts may put upon the Waterfront Commission Compact; what matters here are the rules of law employed by the courts of New Jersey and Pennsylvania to interpret the DRPA Compact. And these are entirely consistent: both creator states attribute the same meaning "to the words govern[ing] the obligations assumed in the agreement"; both have held that complementary expressions of policy, enacted by their respective legislatures, are applicable to the bi-state agency they have formed, with the consent of Congress.

Indeed, in the many years during which the courts of each state have applied parallel legislation to bi-state agencies without requiring explicit amendment of the compact, the respective legislatures have voiced no disapproval of such judicial interpretation. Where the legislatures of the creator states have not disturbed the actions of their courts, those actions need not be reviewed by this Court.

## III. THE DECISION BELOW DOES NOT CONFLICT WITH THE DRPA COMPACT, AND HENCE DOES NOT VIOLATE THE SUPREMACY CLAUSE

Since a congressionally approved compact is, "after all, a contract" between its signatory states, *Texas v. New Mexico*, 482 U.S. 124, 128 (1987), it is subject to "the ordinary rule" of contract interpretation "that all provisions of a compact must be read together in a meaningful manner." *Oklahoma v. New Mexico*, 501 U.S. 239, 245 (1991) (Rehnquist, C.J., concurring in part and dissenting in part). The decision below does precisely that. Faithful to the New Jersey Supreme Court's treatment in *Local 68, supra,* of near identical language contained in the Delaware River and Bay Authority Compact, *See* 147 N.J. at 446, the lower court held that the petitioner's generalized power to "fix and determine" wages and working conditions as set forth in the Compact was modified by the express amendatory clause, which allows for additional obligations to be imposed upon the DRPA if the creator states each enact legislation having a "substantially similar effect." (A-73a); *N.J.S.A.* § 32:4-6 "Historical and Statutory Notes"; 36 P.S. § 3504.1a "Historical and Statutory Notes." Finding that New Jersey's and Pennsylvania's interest arbitration statutes for police officers were "complementary and parallel", the court below held that they "imposed" upon the petitioner the duty to "mediate and, if necessary, submit to public interest arbitration its contract dispute with Lodge 30." (A-14a, 15a).

Premised upon a reading of the entire Compact, the decision below is wholly consistent not only with relevant state law, but also this Court's teachings. *Oklahoma v. New Mexico, supra*, 501 U.S. at 245. It therefore does no violence to the Supremacy Clause.

## IV. THE DECISION BELOW IS "ARGUABLY INTERLOCUTORY" AND THUS NOT FIT FOR THIS COURT'S REVIEW

As the Appellate Division emphasized, the trial court has *not yet* ordered the parties to proceed to interest arbitration; indeed, at the hearing on Lodge 30's Motion, the trial judge mused, "at this juncture, we don't even know whether there will be interest arbitration." (A-6a). The court below thus conceded that the ruling was at least arguably "interlocutory", but proceeded to pass on the merits to provide "guidance to the parties involved in this dispute." *Id.* at 7a, n.4.

Even when it is "treated as settling 'the law of the case' so as to furnish the rule of the guidance" for the litigants, the interlocutory nature of a decision is "a fact that of itself alone furnishe[s] sufficient ground for the denial of the application" for certiorari. *Hamilton-Brown Shoe Company v. Wolf Brothers and Co.*, 240 U.S. 251, 258 (1916). Here, all the New Jersey courts have done thus far is to order the parties to attempt to mediate their dispute and, "*if necessary*, submit [it] to public interest arbitration." (A-15a) (emphasis added). Even if this Court believed it should opine on such minutia as whether "the issue of subcontracting [will] be a proper subject of arbitration," between the litigants in this matter, Pet. at 23, such issues are simply not ripe for this Court's consideration, a fact that alone provides abundant reason to deny the Writ.

## CONCLUSION

For all the above stated reasons, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

BRUCE E. ENDY*
CHARLES T. JOYCE
BENJAMIN EISNER
SPEAR, WILDERMAN, BORISH, ENDY,
SPEAR AND RUNCKEL, P.C.
230 South Broad Street, Suite 1400
Philadelphia, PA 19102
(215) 732-0101

*Counsel for Fraternal Order of Police Penn-Jersey Lodge 30 and Joseph Vena*

* *Counsel of Record*